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Supreme Court of the United States

OCTOBER TERM, 1954

No. 21

RAY BROOKS, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 15, 1954

CERTIORARI GRANTED MARCH 8, 1954

No. 13502

United States
Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Appellant,

vs.

RAY BROOKS,
Appellee.

Transcript of Record

**Petition for Enforcement of an Order of the
National Labor Relations Board**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States of America, Before the National
Labor Relations Board, Twenty-first Region

Case No. 21-CA-1117

In the Matter of
RAY BROOKS

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS FOR ITS DISTRICT LODGE
No. 727

COMPLAINT

* * *

1.

The Respondent, at all times material herein, has engaged in and is engaging in the operation of an automobile agency dealership and repair shop in Van Nuys, California, under a franchise for the sale and distribution of new Chrysler and Plymouth motor cars, trucks and parts under an agreement with the Chrysler Corporation.

* * *

6.

The International Association of Machinists, District Lodge No. 727, was certified by the National Labor Relations Board on April 20, 1951, as the representative of the employees of Respondent in an appropriate unit as follows:

All employees of the Company who were in the employ of the Employer during the payroll period ending March 24, 1951, excluding

all salesmen, office and clerical employees, watchmen, guards, professional employees and supervisors, as defined in the National Labor Relations Act, as amended.

* * *

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twenty-first Region, this 30th day of July, 1951, issues this Complaint against Ray Brooks, Respondent herein.

[Seal] /s/ HOWARD F. LeBARON,
Regional Director, National Labor Relations Board,
Twenty-first Region.

[Admitted in evidence as General Counsel's Exhibit No. 1-C, October 8, 1951.]

Before the National Labor Relations Board

[Title of Cause.]

ANSWER

Comes Now Ray Brooks, respondent in the above-entitled matter, and answering the complaint on file herein, admits, denies and alleges as follows:

I.

Respondent Ray Brooks denies generally and specifically all allegations in Paragraphs numbered II, IV, V, VII, VIII, IX, X, XI and XII.

II.

In answer to Paragraph I, Respondent Ray Brooks admits all the allegations contained therein, saving the allegation with respect to the dealership of trucks.

III.

Answering Paragraph III, Respondent Ray Brooks admits that he obtains new Chrysler and Plymouth motor cars in the conduct of his business, but denies generally and specifically each and every other allegation contained therein.

IV.

As a statement of fact as required by Section 203.20 of the National Labor Relations Board Rules and Regulations, Series 5, as amended, Respondent Ray Brooks alleges that he has not bargained with the union because the men employed in Respondent's shop have revoked the union's authority to represent them in any and all negotiations with Respondent.

Wherefore, Respondent Ray Brooks prays that the complaint be dismissed and for such other and further relief as to the Board seems just and meet in the premises.

/s/ RAY BROOKS,
Respondent.

Duly verified.

Affidavit of Service by Mail attached.

[Admitted in evidence as General Counsel's Exhibit No. 1-F, October 10, 1951.]

Before the National Labor Relations Board

[Title of Cause.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

The General Counsel of the National Labor Relations Board issued a complaint dated July 20, 1951, based upon a charge duly filed on May 29, 1951, by International Association of Machinists, District Lodge No. 727, herein called the Union, against Ray Brooks, herein called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charge, complaint, and notice of hearing thereon were duly served upon Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged that Respondent, on and after April 21, 1951, had (1) refused on request to bargain with the Union as the duly certified representative of a majority of his employees in an appropriate unit and (2) interfered with, restrained, and coerced his employees by (a) attempting to influence them against the Union and (b) threatening to withdraw rights and privileges enjoyed by the employees prior to the certification of the Union on April 20, 1951. Respondent's answer alleged that

his employees had revoked the authority of the Union to represent them and denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held on October 8 and 9, 1951, at Los Angeles, California, before the undersigned Trial Examiner, Martin S. Bennett. The General Counsel and Respondent were represented by counsel and the Union by its representatives. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the close of the hearing, Respondent moved that the allegations of the complaint be dismissed; the undersigned denied that portion of the motion relating to the alleged refusal to bargain and reserved ruling on that portion relating to the alleged interference, restraint, and coercion. The latter is disposed of by the findings hereinafter made. The parties were afforded an opportunity to present oral argument and to submit briefs and/or proposed findings and conclusions to the undersigned. The General Counsel presented oral argument and a brief has been received from Respondent.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I.

The Business of Respondent

Ray Brooks, an individual doing business under that name, is a dealer franchised by the Chrysler

Corporation who is engaged in the sale of new Chrysler and Plymouth automobiles at Van Nuys, California. During the year 1950, Respondent purchased and sold within the State of California new automobiles valued in excess of \$400,000. These automobiles were assembled within the State of California by the manufacturer from parts of which approximately fifty per cent were manufactured in States of the United States other than the State of California and shipped to that State for assembly there. The undersigned finds that Respondent is engaged in commerce within the meaning of the Act. *N.L.R.B. v. Townsend*, 185 F. 2d 378 (C.A. 9), cert. denied 341 U.S. 909; *Howell Chevrolet*, 95 N.L.R.B. No. 62, and *Baxter Brothers*, 91 N.L.R.B. 1480.

II.

The Labor Organization Involved

International Association of Machinists, District Lodge No. 727, is a labor organization admitting to membership employees of Respondent.

III.

The Unfair Labor Practices

A. The Refusal to Bargain

1. Introduction; the Representation Case

Presented for decision herein are the issues of whether Respondent has refused to bargain collectively with the Union subsequent to the certification of the latter as the result of a Board-conducted

election, and whether, after said election, Respondent interfered with, restrained, and coerced its employees by threatening to deprive them of privileges previously enjoyed. As stated, Respondent's defense to the claimed refusal to bargain is that the employees in the unit have revoked the authority of the Union to represent them, thereby allegedly destroying the representative status claimed by the Union.

The history of the representation proceeding is as follows: Respondent and the Union entered into a consent election agreement on March 27, 1951, in Case No. 21-RC-1868. The election was duly held on April 12, 1951, with all 15 eligibles voting. Two ballots were challenged on the ground that they had been cast by supervisory employees; the challenges have not been resolved. Of the 13 valid votes counted, 8 were cast for the Union and 5 against. No objections to the election were filed and the Union was duly certified on April 20, 1951, by the Regional Director for the Twenty-first Region, as the representative of the employees of Respondent.

2. The Appropriate Unit

The complaint alleges that the unit agreed upon by the parties to the consent election agreement, including all employees of Respondent, but excluding salesmen, guards, professionals, and supervisors, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. The undersigned finds that the above-described unit, the appropriateness of which Respondent does not dispute herein, constitutes a

unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Representation by the Union of a Majority in the Appropriate Unit

As stated, the Union was duly certified on April 20, 1951, after winning the election held on April 12, as the exclusive representative for the purposes of collective bargaining of the employees in the above-described appropriate unit. Despite such certification, and the great weight uniformly attributed thereto, Respondent contends that the Union is no longer entitled to the benefits of this representative status, placing reliance on a document introduced in evidence herein. This document, consisting of one page in longhand, was received in the mail by Respondent on April 19, one week after the Union won the election and one day before the certification issued; a copy was also received by the Union at the same time.¹ The document bears the purported signatures of nine of the 13 employees of Respondent who cast valid ballots in the election and reads as follows:

We, the undersigned majority of the employees of Ray Brooks, Chrysler-Plymouth Dealer, 6530 Van Nuys Blvd., Van Nuys, Calif., are not in favor of being represented by Union Local No. 727 as a bargaining (sic) agent. We respectfully submit this petition for your consideration.

¹As will appear, the Union requested and Respondent refused a meeting after receipt of this document.

Respondent argues that this document constitutes a repudiation of the Union by a majority of those in the unit and that as a result the Union has lost its representative status acquired in the election of April 12, 1951; reliance is placed upon the decision in *N.L.R.B. v. Vulcan Forging Co.*, 188 F. 2d 927 (C.A. 6).

The undersigned is of the belief that this argument must be resolved adversely to Respondent. Despite the cited decision, Board law and the great weight of court law adopt a contrary view. The policy of issuing a certificate as bargaining representative after an election conducted by the Board is based upon the desirable safeguard of a secret ballot under governmental authority free from all influence, thus obtaining the most reliable indication of the employee concerning his true views relative to union representation and collective bargaining. The statute, if a labor organization has been selected by a majority of the employees, then proceeds to bind the employees to their choice for a reasonable period, normally one year. *N.L.R.B. v. Geraldine Novelty Co.*, 173 F. 2d 14 (C.A. 2). A contrary view, not stabilizing the issue in this fashion, would create the very "litigious bedlam and judicial chaos" intended to be avoided by these salutary principles which imbue a certification with a reasonable amount of permanence. *N.L.R.B. v. Appalachian Electric Power Co.*, 140 F. 2d 385 (C.A. 4). See *N.L.R.B. v. Worcester Woolen Mills Corp.*, 170 F. 2d 13 (C.A. 1), cert. denied 336 U.S. 903 and

N.L.R.B. v. Prudential Insurance Co., 154 F. 2d 385 (C.A. 6).

This principle recognizes the inevitability in a democratic plan of employee representation of subordinating for a period of time any shifts in employee sentiment in favor of a reasonable period of stability in employer-employee relations. This view is recognized and discussed in *N.L.R.B. v. Century Oxford Mfg. Corp.*, 140 F. 2d 541 (C.A. 2), cert. denied 323 U.S. 714, where the Court stated as follows:

The purpose of the Act is to insure collective representation for employees, and to that end section 9 gives power to the Board to supervise elections and certify the winners as the authorized representatives. Inherent in any successful administration of such a system is some measure of permanence in the results; freedom to choose a representative does not imply freedom to turn him out of office with the next breath. As in the case of choosing a political representative, the justification for the franchise is some degree of sobriety and responsibility in its exercise. Unless the Board has power to hold the employees to their choice for a season, it must keep ordering new elections at the whim of any volatile caprice; for an election, conducted under the proper safeguards, provides the most reliable means of ascertaining the deliberate will of the employees.

The foregoing views of the courts, approving Board policy, are only strengthened when attention

is given to the legislative history of the amendments to the Act in 1947. The Board's one-year certification rule was one of long standing and was presumably well known to Congress prior to the changes in the Act. See N.L.R.B. Twelfth Annual Report, 1947, and N.L.R.B. Eleventh Annual Report, 1946. Moreover, Section 9 (c) (3) of the amended Act proscribes the holding of more than one valid election in an appropriate unit during a 12-month period; this is tantamount to approval and adoption of the Board's one-year certification rule.

As stated by Senator Taft, "The bill also provides that elections shall be held only once a year, so that there shall not be a constant stirring up of excitement by continued elections. The men choose a bargaining agent for one year. He remains the bargaining agent until the end of that year" (93 Cong. Rec. 3838).

The Senate reports reflect a similar view. As stated in one,

In order to impress upon employees the solemnity of their choice, when the Government goes to the expense of conducting a secret ballot . . . elections in any given unit may not be held more frequently than once a year.

* * *

This amendment prevents the Board from holding elections more often than once a year in any given bargaining unit unless the results of the first election are inconclusive by reason of none of the competing unions having re-

ceived a majority. At present, if the Union loses, it may on presentation of additional membership cards secure another election within a short time, but if it wins its majority cannot be challenged for a year (S. Rep. No. 105, 80th Cong., 1st Sess. 12, 25).

The desirability of this rule was expressly recognized by the courts in decisions handed down after the passage of the 1947 amendments. *N.L.R.B. v. Worcester Woolen Mills*, *supra*, and *N.L.R.B. v. Geraldine Novelty Co.*, *supra*. Thus, applying these controlling views to the instant proceeding, it becomes apparent that they involve the application of a single rather than a double standard, as adherence to Respondent's contention herein would require. If the Union, or any union, had lost the election, it would then be precluded from achieving a representative status as a certified bargaining representative for 12 months. By the same token, if the employees, in the secrecy of the voting booth, and free from any outside interference, vote in favor of and select the Union as their bargaining agent, this selection, as Board policy recognizes, should last for an identical period, at least 12 months. *Majure Transport Co.*, 95 N.L.R.B. No. 43. Employees can scarcely be impressed with the solemnity of a choice which they are permitted to forthwith repudiate.

Still another basic consideration is, in the view of the undersigned, controlling herein. Respondent has placed reliance, in disputing the union majority,

on a document received in the mail which bears the names of nine employees as purported signers thereof. No evidence was offered that the nine employees whose names appear thereon had actually affixed their signatures thereto and none was offered with respect to any of the circumstances of the preparation or signing of the document. The record discloses no evidence that Respondent made a comparison of these signatures with those of the named employees which it presumably has on its payroll records. Not only were none of the nine called as witnesses by Respondent, but furthermore, when one of the nine, Verner Emrick, testified herein as a witness for the General Counsel, he was not questioned by Respondent concerning his purported signature on the document which was later introduced in evidence by Respondent.

In sum, there has been a failure to prove that the document merits the weight which Respondent would attribute to it.² There is no evidence concerning the circumstances of the signing, or as to who actually affixed the signatures. By way of significant contrast, in a proceeding where the General Counsel desires to prove a union majority on the basis of union designation cards, rather than a certification, he is generally required to have the signature on each card identified by the signer or by one who saw the card signed by the signer. *Schramm and Schmieg Co.*, 67 N.L.R.B. 980, and

²The document was received in evidence solely as a document which Respondent received in the mail on April 19, 1951.

The Warren Co., 90 N.L.R.B. 689. Similar evidence of an authenticating nature is totally lacking here, and to attribute to this document the weight urged by respondent would again mean the application of a double standard. This serves only to highlight the reasonableness of the Board's policy in attributing such great weight to the desires of the employees when expressed in the privacy of the voting booth.

In view of the foregoing, the undersigned rejects Respondent's contention herein and finds that on April 12, 1951, and at all times thereafter, the Union, by virtue of Section 9 (a) of the Act, was and now is the duly designated representative of a majority of the employees in the above-described appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

4. The Refusal to Bargain

After the Union was duly certified on April 20, 1951, Representative D. A. Gordon addressed a letter to Respondent on April 27. He directed attention to the certification, asked for a meeting for the purpose of negotiating a contract covering Respondent's employees and requested a reply. On May 1, Respondent's counsel replied for Respondent. The reply stated that Respondent had "been given to understand that the majority of the employees of Ray Brooks have repudiated the union and no longer wish to be represented by it." The letter further stated that in a recent decision, the Court of Appeals for the Sixth Circuit, in analo-

gous circumstances, had held it improper to compel employees to be represented by a repudiated labor organization; in conclusion, the letter stated that it would "be wiser to defer consideration of the proposed negotiations until such time as it might appear that the employees desire to have your union represent them." There is no evidence of any other communications between the parties.

As is apparent, there has been a refusal by Respondent to recognize the Union and negotiate a contract. This position is predicated on Respondent's rejection of and failure to honor the certification of the Union. However, this precise contention has hereinabove been decided adversely to Respondent. Accordingly, the undersigned finds that, on May 1, 1951, and at all times thereafter, Respondent has refused to bargain collectively with the Union and has thereby interfered with, restrained, coerced its employees in the exercise of the rights guaranteed by the Act.

5. Alleged Interference, Restraint, and Coercion

In support of this allegation, the General Counsel offered evidence of two incidents. Three employees, Emrick, Callucci, and White testified concerning a talk made by Ray Brooks to the employees soon after it was learned that the Union had won the election. The versions of Emrick and Cellucci reflect nothing more than surprise and disappointment on the part of Brooks, expressed graphically, over the results of the election and an announcement that in the future, matters affecting working conditions

were to be handled through the union representative. White's version is similar, but he also attributed to Brooks the statement that Brooks would be unable to advance money and grant certain privileges (unspecified) to the employees as in the past.

Emrick also testified concerning a statement allegedly made to him by Shop Foreman Jennings. Emrick regularly rode to work with Jennings and the latter's wife. On one such occasion, Jennings was speaking to his wife who was also in the front seat. Emrick, in the rear, allegedly heard Jennings state that he would not work in a shop which a union had organized and that the employees of Respondent would be denied the existing privilege of working on their own cars (presumably in the event of union organization). Emrick, a vague witness, placed this talk as occurring either shortly before or shortly after the election. Brooks and Jennings did not testify herein.

In view of both the quality and quantity of the evidence presented herein, the undersigned is of the belief and concludes that the record does not warrant and will not support a finding of interference, restraint, and coercion based on the foregoing matters. It will be recommended that this allegation be dismissed.

IV.

The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent, set forth in Section III above, occurring in connection with his business

operations described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V.

The Remedy

Having found that Respondent has engaged in certain unfair labor practices, it will be recommended that he cease and desist therefrom and that he take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. International Association of Machinists, District Lodge No. 727, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees of Respondent at his place of business at Van Nuys, California, excluding salesmen, guards, professionals, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. International Association of Machinists, District Lodge No. 727, was on April 12, 1951, and at all times thereafter has been and is, the exclusive representative of all employees in the aforesaid ap-

propriate unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on May 1, 1951, and at all times thereafter, to bargain collectively with International Association of Machinists, District Lodge No. 727, as the exclusive representative of his employees in the aforesaid appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced his employees in the exercise of the rights guaranteed by Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

7. Respondent has not engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act by threatening to deprive his employees of rights and privileges enjoyed prior to certification of the Union.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that Respondent, Ray Brooks, Van Nuys, California, his agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Association of Machinists, District Lodge No. 727, as the exclusive representative of all his employees, excluding salesmen, guards, professionals, and supervisors;

(b) In any manner interfering with the efforts of International Association of Machinists, District Lodge No. 727, to bargain collectively with him in behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Association of Machinists, District No. 727, as the exclusive representative of all employees in the aforesaid appropriate unit with respect to wages, rates of pay, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at his place of business at Van Nuys, California, copies of the notice attached hereto and marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by him for a period of sixty (60) consecutive days in conspicuous places, including all places where

notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order what steps Respondent has taken to comply herewith.

It is also recommended that unless on or before twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order, Respondent notifies the aforesaid Regional Director in writing that he will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondent to take the aforesaid action.

It is further recommended that the complaint be dismissed insofar as it alleges that Respondent has interfered with, restrained, and coerced his employees by threatening to deprive them of rights and privileges enjoyed prior to the certification of the Union.

Dated this 29th day of October, 1951.

/s/ MARTIN S. BENNETT,
Trial Examiner.

Appendix A

Notice to All Employees

Pursuant to

The Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Bargain collectively upon request with International Association of Machinists, District Lodge No. 727, as the exclusive representative of all employees in the bargaining unit described herein with respect to rate of pay, wages, hours, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees of Ray Brooks, Van Nuys, California, but excluding salesmen, guards, professionals, and supervisors.

We Will Not in any manner interfere with the efforts of the above-named union to bargain collectively with us, or refuse to bargain with said union as the exclusive representative of the employees in the bargaining unit set forth above.

Dated.....

RAY BROOKS,

(Employer)

By.....,

(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States of America
Before the National Labor Relations Board

Case No. 21-CA-1117

In the Matter of:

RAY BROOKS

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS FOR ITS DISTRICT LODGE
No. 727

DECISION AND ORDER

On October 29, 1951, Trial Examiner Martin S. Bennett issued his Intermediate Report in this proceeding, finding that the Respondent had engaged in and was engaging in conduct violative of Sections 8 (a) (1) and 8 (a) (5) of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other violations of Section 8 (a) (1) alleged in the complaint, and recommended that such allegations be dismissed. Thereafter, the Respondent filed exceptions to the Intermediate Report, and a supporting brief.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing and finds that no

¹Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.²

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Ray Brooks, Van Nuys, California, his agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Association of Machinists, District Lodge No. 727, as the exclusive representative of all his employees, excluding salesmen, guards, professionals, and supervisors;

(b) In any manner interfering with the efforts

²In its brief, the Respondent contends that the Board is without jurisdiction in this matter because there is no allegation or proof that the charging union is in compliance with Section 9 (f) (g) and (h). We find no merit in this contention. The Act does not, as a condition to the exercise of its jurisdiction, require pleading and proof by the Board that the Union has complied with these requirements. *N.L.R.B. v. Greensboro Coca-Cola Co.*, 180 F. 2d 840 (C.A. 4); *N.L.R.B. v. Red Rock Co.*, 187 F. 2d 76 (C.A. 5). Moreover, we have administratively determined that the filing requirements of Section 9 (f) (g) and (h) of the Act were fully satisfied at all relevant times in this case.

of International Association of Machinists, District Lodge No. 727, to bargain collectively with him in behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Association of Machinists, District No. 727, as the exclusive representative of all employees in the aforesaid appropriate unit with respect to wages, rates of pay, hours of employment or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at his place of business at Van Nuys, California, copies of the notice attached to the Intermediate Report and marked "Appendix A."³ Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by him for a

³This notice, however, shall be, and it hereby is, amended by striking from line 3 thereof the words "The Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order." In the event that this Order is enforced by a decree of the United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

period of sixty (60) consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps Respondent has taken to comply herewith.

Signed at Washington, D.C., April 1, 1952.

[Seal]

NATIONAL LABOR RELATIONS BOARD,

PAUL M. HERZOG,
Chairman,

JOHN M. HOUSTON,
Member,

PAUL L. STYLES,
Member.

Before the National Labor Relations Board

Twenty-first Region

Case No. 21-CA-1117

In the Matter of:

RAY BROOKS

and

**INTERNATIONAL ASSOCIATION OF MA-
CHINISTS** for its District Lodge No. 727.

PROCEEDINGS

Monday, October 8, 1951.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock a.m.

Before: Martin S. Bennett, Trial Examiner.

Appearances:

JAMES W. CHERRY, JR.,

Appearing on Behalf of the General Counsel of
the National Labor Relations Board.

CARTER & POTRUCH, by

FREDERICK A. POTRUCH, and

JAMES M. NICOSON,

Appearing on Behalf of Respondent.

E. M. SKAGEN and

WALTER OWEN,

Appearing on Behalf of International
Association of Machinists, for its Dis-
trict Lodge No. 727, and the Research
Department, Machinists Building, Wash-
ington, D. C.

(The documents heretofore marked General Counsel's Exhibits Nos. 1-A to 1-F, inclusive, for identification, were received in evidence.)

* * *

Mr. Cherry: I have had some discussion with Mr. Nicoson off the record concerning a possible stipulation of commerce [5*] facts, and I would like to propose at this time a stipulation that Ray Brooks, an individual, doing business as Ray Brooks, a Chrysler-Plymouth dealer, operating with a franchise from the Chrysler Corporation, doing business in Van Nuys, California, during the last fiscal year, or, rather, calendar year, purchased in excess of \$400,000.00 of automobiles from the Chrysler Corporation. All of these cars were purchased locally and assembled locally, and substantially all of them were sold locally.

Mr. Nicoson: All of them; not substantially. It was all of them.

Mr. Cherry: All of them were sold locally. It is further stipulated that approximately 50 per cent of the parts going into the cars were manufactured and shipped into the state from outside the State of California.

It is further stipulated that the Chrysler Corporation is engaged in business in all the states of the Union.

Mr. Nicoson: Just for the sake of being accurate, we better say that Chrysler Corporation oper-

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

ates businesses in other states, other than the State of California.

Mr. Cherry: I will accept that as an amendment.

Mr. Nicoson: We will stipulate to that.

Mr. Skagen: So stipulated.

Trial Examiner Bennett: So stipulated. Do I understand that the current nature of the respondent's business is [6] similar to its business during 1950?

Mr. Nicoson: Yes. Your Honor, I should also point out that in reaching this stipulation on the facts we do not concede, however, that Ray Brooks is engaged in business affecting commerce or within the jurisdiction of the National Labor Relations Act or Board.

Trial Examiner Bennett: Yes. Your Answer sets forth that. I also thought that respondent's Answer denies that the charging union is a labor organization.

Mr. Nicoson: We might permit that, your Honor.

Mr. Cherry: Can we so stipulate?

Mr. Nicoson: We will stipulate to that.

Mr. Cherry: That the charging union is a labor organization within the meaning of the Act?

Mr. Nicoson: So stipulated.

Trial Examiner Bennett: So stipulated. [7]

* * *

(The documents heretofore marked General Counsel's Exhibits Nos. 2, 3, and 4 for identification were received in evidence.) [9]

* * *

GENERAL COUNSEL'S EXHIBIT No. 2

United States of America
National Labor Relations Board

Agreement for Consent Election

Pursuant to a Petition duly filed under Section 9 of the National Labor Relations Act as amended, and subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), the undersigned parties hereby waive a hearing and agree that an election by secret ballot is to be held under the supervision of the said Regional Director, among the employees of the undersigned Employer in the unit defined below, at the indicated time and place, to determine the proposition checked below. (Check appropriate box.)

- ☐ Representation Election: Whether or not such employees desire to be represented for the purpose of collective bargaining by (one of) the undersigned labor organization(s).
- ☐ Union Shop Election: Whether or not such employees desire to authorize the undersigned Union, which is their present collective bargaining representative, to make an agreement with the undersigned Employer requiring membership in such Union as a condition of continued employment.

The Parties Hereby Further Agree as Follows:

1. Election—Such election shall be held in accordance with the National Labor Relations Act,

General Counsel's Exhibit No. 2—(Continued)
the Board's Rules and Regulations, and the customary procedures and policies of the Board, provided that the determination of the Regional Director shall be final and binding upon any question, including questions as to the eligibility of voters, raised by any party hereto relating in any manner to the election.

2. Eligible Voters—The eligible voters shall be those employees included within the Unit described below, who appear on the Employer's pay roll for the period indicated below, including employees who did not work during said pay roll period because they were ill or on vacation or temporarily laid off, and employees in the Armed Forces of the United States who present themselves in person at the polls, but excluding any employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election and any employees on strike who are not entitled to reinstatement. At a date fixed by the Regional Director, the Employer will furnish to the Regional Director an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. Notices of Election—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The Employer, upon the request of and at a time designated by the Regional Direc-

General Counsel's Exhibit No. 2—(Continued)
tor, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. Observers—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally.

5. Tally of Ballots—As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties. When appropriate, the Regional Director shall issue to the parties a certification of representatives or certificate of results of election, as may be indicated.

6. Objections, Challenges, Reports Thereon—Objections to the conduct of the election or conduct affecting the results of the election, or to a determination of representatives based on the results thereof, may be filed with the Regional Director within five days after issuance of the Tally of Ballots. Copies of such objections must be served upon the other parties at the time of filing with the Regional Director. The Regional Director shall investigate the matters contained in the objections and issue a report thereon. If objections are sustained, the Regional Director may in his report

General Counsel's Exhibit No. 2—(Continued)

include an order voiding the results of the election and, in that event, shall be empowered to conduct a new election under the terms and provisions of this agreement at a date, time, and place to be determined by him. If the challenges are determinative of the results of the election, the Regional Director shall investigate the challenges and issue a report thereon. The method of investigation of objections and challenges, including the question whether a hearing should be held in connection therewith, shall be determined by the Regional Director, whose decision shall be final and binding.

7. **Run-Off Procedure**—In the event more than one labor organization is signatory to this agreement, and in the event that no choice on the ballot in the election receives a majority of the valid ballots cast, the Regional Director shall proceed in accordance with Section 203.62 of the Board's Rules and Regulations.

(Copy)

8. **Commerce**—The Employer is engaged in commerce within the meaning of Section 2 (6) (7) of the National Labor Relations Act.

9. **Wording on the Ballot**—Only the choice below marked "X" is pertinent to this agreement.

Representation Election:

- ☒ In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot:

General Counsel's Exhibit No. 2—(Continued)

- First
Second
Third
Fourth

Where only one labor organization is signatory to this agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" or "No "

Union Shop Election:

- ☐ Do you wish to authorize the union which is your present collective bargaining representative to enter into an agreement with your employer which requires membership in such union as a condition of continued employment?

10. Pay Roll Period for Eligibility—
March 24, 1951.

11. Date, Hours, and Place of Election—
Date: April 12, 1951.
Hours: 9:30 a.m. to 10:00 a.m.
Place: Company's plant.

12. The Appropriate Collective Bargaining Unit—
Included: All employees of the Company.
Excluded: All salesmen, office and clerical employees, watchmen, guards, professional employees and supervisors as defined in the National Labor Relations Act, as amended.

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, DISTRICT LODGE 727,
(Petitioner)

By /s/ E. M. SKAGEN,
Grand Lodge Representative.

General Counsel's Exhibit No. 2—(Continued)

RAY BROOKS,
(Employer)

By /s/ FREDERICK A. POTRUCH.

Date executed: 3/27/51.

Recommended:

/s/ LEO J. KLOOS, JR.,
Field Examiner, National
Labor Relations Board.

Date approved: 3/28/51.

/s/ HOWARD F. LeBARON,
Regional Director, National
Labor Relations Board.

Case No. 21-RC-1868.

Admitted in evidence October 8, 1951.

GENERAL COUNSEL'S EXHIBIT No. 3

**United States of America
National Labor Relations Board**

(Copy)

Case No. 21-RC-1868

**In the Matter of:
RAY BROOKS**

and

**INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, DISTRICT LODGE 727.**

Date Issued: April 12, 1951.

Type of Election (Check one):

- ☒ **Consent**
☐ **Stipulated**
☐ **Board ordered**

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters. 15
2. Void ballots
3. Votes cast for International Association
of Machinists, District Lodge 727..... 8
4. Votes cast for
5. Votes cast for

6. Votes cast against participating labor organization(s) 5
7. Valid votes counted (sum of 3, 4, 5, and 6) 13
8. Challenged ballots 2
9. Valid votes counted plus challenged ballots
(sum of 7 and 8) 15
10. Challenges are (not) sufficient in number
to affect the results of the election.
11. A majority of the valid votes has been
cast for International Association of Ma-
chinists, District Lodge 727.

For the Regional Director:

/s/ MAX STEINFELD.

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For International Association of Machinists, District Lodge 727:

/s/ LEONARD A. WHITE.

For Ray Brooks:

/s/ W. C. REAGAN.

Admitted in evidence October 8, 1951.

GENERAL COUNSEL'S EXHIBIT No. 4

United States of America
National Labor Relations Board

(Copy)

Case No. 21-RC-1868

In the Matter of:

RAY BROOKS

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, DISTRICT LODGE 727.

CERTIFICATION OF REPRESENTATIVES

Pursuant to the terms and provisions of the Agreement for Consent Election entered into by and between the parties in the above-entitled matter, the undersigned Regional Director of the National Labor Relations Board conducted an election by secret ballot as therein provided. No objections were filed to the Tally of Ballots furnished to the parties, or to the conduct of the election.

Pursuant to authority vested in the undersigned by Section 5 of the Agreement for Consent Election and by the National Labor Relations Board, it is hereby certified that a majority of the valid ballots has been cast for International Association of Machinists, District Lodge 727, and that pursuant to Section 9 (a) of the National Labor Relations Act said organization is the exclusive representative of all the employees in the unit defined in the

Agreement for Consent Election for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Los Angeles, Calif., this 20th day of April, 1951.

On Behalf of:

NATIONAL LABOR
RELATIONS BOARD,

/s/ HOWARD F. LeBARON,
Regional Director for 21st Region, National Labor
Relations Board.

Admitted in evidence October 8, 1951.

Trial Examiner Bennett: They may be admitted.

(The documents heretofore marked General Counsel's Exhibits Nos. 5 and 6 for identification were received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 5

April 27, 1951.

Mr. Ray Brooks,
6530 Van Nuys Boulevard,
Van Nuys, California.

Dear Sir:

Pursuant to the terms and provisions of the National Labor Relations Board election and the Certification issued by the National Labor Relations Board on the 20th day of April, 1951, we are hereby

requesting a meeting for the purpose of negotiating a contract for your employees employed in the Production and Maintenance Departments of your shop, located at 6530 Van Nuys Blvd., Van Nuys, California.

We would like to hear from you at your earliest convenience.

Sincerely yours,

D. A. GORDON,

International Association of
Machinists.

DAG:sl

cc: Roy M. Brown

John Snider

Admitted in evidence October 8, 1951.

GENERAL COUNSEL'S EXHIBIT No. 6

(Copy)

Law Offices of
Carter & Potruch
610 South Broadway
Los Angeles 14

May 1, 1951.

Mr. D. A. Gordon,
District Lodge 727, I.A.M.,
5501 Lankershim Boulevard,
North Hollywood, California.

Dear Mr. Gordon:

Re: Ray Brooks.

Your letter of April 21 addressed to Mr. Ray Brooks has been forwarded to us. Both Mr. Brooks

and we have been given to understand that the majority of the employees of Ray Brooks have repudiated the union and no longer wish to be represented by it.

A recent decision of the United States Court of Appeals for the Sixth Circuit held in a similar situation that it would be improper to compel the employees to be represented by a discredited union and that to force them to bargain through a representative which they had repudiated would be depriving them of their right to bargain through the representative of their choice.

Under the circumstances wouldn't it be wiser to defer consideration of the proposed negotiations until such time as it might appear that the employees desire to have your union represent them?

Sincerely yours,

/s/ **FREDERICK A. POTRUCH.**

JMN :gh

Admitted in evidence October 8, 1951.

Mr. Cherry: Mr. Emrick, please.

VERNER L. EMRICK

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Cherry:

Q. State your name, please.

A. Verner L. Emrick.

(Testimony of Verner L. Emrick.)

* * *

Q. Were you ever employed at the Chrysler-Plymouth plant, the dealer's place of Ray Brooks?

A. Yes, sir. [10]

* * *

Q. When did you first go to work, approximately, do you know?

A. Well, I went to work right after Paul Jennings did. That was the new service manager after Jack left.

Q. Was that early in the year of 1951?

A. That was early, I think about February.

Q. Were you at the plant at the time of the election?

A. Yes.

Q. It was in April?

A. Yes.

Q. Of 1951?

A. I was.

Q. What kind of work were you doing?

A. I was the sweeper and a gardner, porter, and I guess that would be all. [11]

* * *

Mr. Nicoson: Your Honor, I have had marked for identification a document consisting of one page, and marked Respondent's Exhibit 1-A, with an envelope, which has been marked Respondent's Exhibit 1-B.

(Thereupon the documents above referred to were marked Respondent's Exhibits Nos. 1-A and 1-B for identification.)

Mr. Nicoson: I understand that it is stipulated

by General Counsel and myself that this document was received by the Ray Brooks Company in the United States registered mail on or about the date it bears, being April 18, 1951; is that correct?

Mr. Cherry: Yes.

Mr. Nicoson: With that understanding, I offer it as the document received by the respondent.

Mr. Cherry: I would so stipulate, that the document was received. I will not stipulate as to the authenticity of its signatures. But for that limited purpose I have no objection to it being admitted in evidence.

Mr. Nicoson: It is just to complete the record. Can we have a stipulation further that an identical copy of this, [58] with the signatures also as they appear here, was received by the National Labor Relations Board and also by the charging union?

Mr. Skagen: I will stipulate we received such a document, that the union received such a document. However, I will not stipulate as to the authenticity of any signatures or the accuracy of the document.

Mr. Cherry: I don't know whether a copy was actually sent to the Labor Board, but I have such a copy. I have no objection to it. I will so stipulate, that we have a copy of it and the union received a copy of it.

Trial Examiner Bennett: So stipulated. I gather there is no objection to its receipt in evidence.

Mr. Skagen: For the limited purpose, I have no objection.

Mr. Cherry: No.

Trial Examiner Bennett: It may be admitted, the envelope as well.

(The documents heretofore marked Respondent's Exhibits Nos. 1-A and 1-B for identification were received in evidence.)

RESPONDENT'S EXHIBIT No. 1-A

April 18, 1951.

We, the undersigned majority of the employees of Ray Brooks, Chrysler-Plymouth Dealer, 6530 Van Nuys Blvd., Van Nuys, Calif., are not in favor of being represented by Union Local No. 727 as a bargaining agent.

We respectfully submit this petition for your consideration.

/s/ MELVIN C. SOULSBURG,

/s/ MONTE C. BROWN,

/s/ FRANKLIN C. WINN,

/s/ WILLIE BRUCE,

/s/ VERNER L. EMRICK,

/s/ CHARLIE BRUCE,

/s/ GARTH BOYCE,

/s/ HAROLD AZBILL,

/s/ GEORGE MILLS.

Admitted in evidence October 8, 1951.

Mr. Skagen: For the record, this is the document with the date April 18, 1951, in the upper right-hand corner.

Trial Examiner Bennett: That is right. I notice, however, the envelope bears post office mark of April 19th.

Mr. Nicoson: I would be willing to stipulate [59] that is the actual date of receipt.

Mr. Cherry: We have no objection to that at all.

Trial Examiner Bennett: Do you agree to that, Mr. Cherry?

Mr. Cherry: Yes.

Trial Examiner Bennett: So stipulated.

* * *

GERALD O. RICHARDSON

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicoson: [60]

* * *

Q. (By Mr. Nicoson): I hand you a document which has been marked Respondent's Exhibit 2 for identification, and I will ask you if that reflects the names of the employees who were on the eligibility list, in the employ of Ray Brooks, on the date of the election, April 12, 1951? A. That is right.

Q. I will ask you also if that list shows the employees who were in the employ of Ray Brooks on April 18, 1951? A. That is right.

(Testimony of Gerald O. Richardson.)

Mr. Niccson: I offer this in evidence. [61]

* * *

Trial Examiner Bennett: I note there are 15 names, including the name of the body shop foreman. As I understand it, he was on the eligibility list.

Mr. Nicoson: He was on the eligibility list, and I think counsel will stipulate with me he voted a challenged ballot, which was not counted. He was challenged on the ground of being a supervisor.

Mr. Cherry: Our records indicate that Newman Prudhomme and Mr. Elmer Schmidt, the last name on the list, were challenged. I don't know why Mr. Schmidt was challenged.

Mr. Nicoson: Same ground.

Mr. Cherry: On the ground he was a supervisor?

Mr. Nicoson: Yes.

Mr. Cherry: Those two challenged votes were never resolved, inasmuch as it didn't affect the results of the election.

Trial Examiner Bennett: You apparently are in agreement with Mr. Nicoson.

Mr. Cherry: Yes. [63]

* * *

(The document heretofore marked Respondent's Exhibit No. 2 for identification was received in evidence.) [67]

(Testimony of Gerald O. Richardson.)

RESPONDENT'S EXHIBIT No. 2

(Copy)

Ray Brooks Pay Roll Ending March 24, 1951

Prudhomme, Newman.....	Body Shop Foreman
Azbill, Harold G.....	Mechanic
Cellucci, Frank	Mechanic
Gordon, Frank	Metalman
Phillips, Kenneth	Mechanic
Soulsburg, Melvin Carl	Mechanic
White, Leonard	Metalman
Winn, Franklin	Mechanic
Boyce, Garth	Pick-up & Delivery
Brown, Monte C.....	Lube Rack
Bruce, Charles	N/C Polisher
Bruce, Willie	N/C Polisher
Emrick, Verner	Porter
Mills, George	Partsman
Schmidt, Elmer	Partsman

Admitted in evidence October 8, 1951.

* * *

October 9, 1951

Mr. Cherry: The General Counsel has no further witnesses in rebuttal this morning.

Trial Examiner Bennett: There is no rebuttal then?

Mr. Cherry: No rebuttal at all. I don't intend to file a brief, and I would like to argue the case orally.

Trial Examiner Bennett: How about you, Mr. Nicoson?

Mr. Nicoson: I think I prefer to file a brief. I think the problem here is largely legal, anyhow, but I would at this time like to make a couple of motions. [71]

* * *

Trial Examiner Bennett: All right, Mr. Cherry, we will hear your argument at this point. [73]

* * *

Mr. Cherry: The 8 (a) (5) allegation, the unfair labor practice in refusing to bargain, is, in my opinion, a very clear-cut issue, and there seems to be no doubt that the union requested bargaining rights, requested a bargaining conference and was turned down.

The only issue appears to be as to why they were turned down, why the company refused to grant the bargaining rights demanded by the union, after winning a consent election and after having been certified by the Board.

There has been no evidence to refute the demand to bargain. There has been no evidence, other than the General Counsel's Exhibit 6, show any reason why they failed to bargain.

Going to Respondent's Exhibits 1-A and 1-B, these were admitted in evidence upon a limited basis. Respondent's Exhibit 1-A is merely a piece of paper in evidence. The contents of it are not of any material importance in this case. The signatures have not been proved. There is no testimony or evidence showing that it was relied upon. There is no testimony or evidence showing that one way

or the other, that it wasn't a forgery. It isn't in evidence for all purposes.

So, as I see the issue, it is just a clear statutory problem as to whether the respondent has to follow the certification and bargain after certification. [74]

• • •

Received October 16, 1951.

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

RAY BROOKS,

Respondent.

**CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD**

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board, Series 6, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled "In the Matter of Ray Brooks and International Association of Machinists, District Lodge 727"; "In the Matter of Ray Brooks and International Association of Machinists for its District Lodge No. 727,"

the same being known as Cases Nos. 21-RC-1868 and 21-CA-1117, respectively, before said Board; such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

Case No. 21-RC-1868

(1) Copy of Petition for Certification of Representatives filed by the International Association of Machinists, District Lodge No. 727, on March 22, 1951.

(2) Copy of Agreement for Consent Election approved by the Regional Director on March 28, 1951 (marked General Counsel's Exhibit No. 2 in Case No. 21-CA-1117 and contained in Volume III of the certified record).

(3) Copy of Tally of Ballots issued by the Regional Director on April 12, 1951 (marked General Counsel's Exhibit No. 3 in Case No. 21-CA-1117 and contained in Volume III of the certified record).

(4) Copy of Certification of Representatives issued by the Regional Director on April 20, 1951 (marked General Counsel's Exhibit No. 4 in Case No. 21-CA-1117 and contained in Volume III of the certified record).

Case No. 21-CA-1117

(5) Order designating Martin S. Bennett Trial Examiner for the National Labor Relations Board, dated October 8, 1951.

(6) Stenographic transcript of testimony taken before Trial Examiner Bennett on October 8 and 9, 1951, together with all exhibits introduced into evidence.

(7) Copy of Trial Examiner Bennett's Intermediate Report, dated October 29, 1951 (annexed to Item 9 hereof); order transferring case to the Board, dated October 29, 1951, together with affidavit of service and United States Post Office return receipts thereof.

(8) Respondent's exceptions to the Intermediate Report, received on November 19, 1951.

(9) Copy of Decision and Order issued by the National Labor Relations Board on April 1, 1952, with Intermediate Report annexed, together with Copy of affidavit of service thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 19th day of August, 1952.

[Seal]

NATIONAL LABOR
RELATIONS BOARD.

/s/ LOUIS R. BECKER,
Executive Secretary.

[Endorsed]: No. 13502. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Appellant, vs. Ray Brooks, Appellee. Transcript of Record. Petition for Enforcement of Order of the National Labor Relations Board.

Filed August 21, 1952.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13502

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

RAY BROOKS,

Respondent.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, Secs. 141, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondent, Ray Brooks, Van Nuys, California, his agents, successors, and assigns. The proceedings resulting in said Order are known upon the records of the Board as "In the Matter of Ray Brooks and International Association of Machinists, District Lodge 727"; "In the Matter of Ray Brooks and International Association of Machinists for its District Lodge No. 727," the same being known as Cases Nos. 21-RC-1868 and 21-CA-1117, respectively.

In support of this petition the Board respectfully shows:

(1) Respondent is an individual engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on April 1, 1952, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, his agents, successors and assigns. On the same date, April 1, 1952, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceedings before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board,

and requiring Respondent, his agents, successors, and assigns, to comply therewith.

**NATIONAL LABOR
RELATIONS BOARD.**

By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C., this 19th day of August, 1952.

[Endorsed]: Filed August 21, 1952.

[Title of Court of Appeals and Cause.]

**STATEMENT OF POINT ON WHICH
PETITIONER INTENDS TO RELY**

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, petitioner in the above proceeding, in conformity with the rules of this Court, hereby states the following point as that on which it intends to rely herein:

The Board correctly determined that respondent refused to bargain with the Union, in violation of Section 8 (a) (5) and (1) of the Act.

/s/ A. NORMAN SOMERS,
Assistant General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 19th day of August, 1952.

[Endorsed]: Filed August 21, 1952.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America

To Ray Brooks, 6530 Van Nuys Blvd., Van Nuys, Calif., and International Association of Machinists, District Lodge 727. Att.: Messrs. E. M. Skagen, Walter Owen and D. A. Gordon, 904 Van Nuys Bldg., Los Angeles, Calif.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A., Title 29 (National Labor Relations Board Act, Section 10 (e)), you and each of you are hereby notified that on the 21st day of August, 1952, a petition of the National Labor Relations Board for enforcement of its order entered on April 1, 1952, in a proceeding known upon the records of the said Board as:

“In the Matter of Ray Brooks and International Association of Machinists for its District Lodge No. 727, Case No. 21-CA-1117,”

and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days

from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 21st day of August, in the year of our Lord one thousand nine hundred and fifty-two.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

Returns on Service of Writ attached.

[Endorsed]: Filed August 30, 1952.

[Title of Court of Appeals and Cause.]

**RESPONDENT'S ANSWER TO PETITION
FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS
BOARD**

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

Comes now Ray Brooks, respondent in the above-entitled matter, and for answer to the petition for enforcement of the order of the National Labor Relations Board, denies, admits and alleges as follows:

I.

Respondent admits that he is an individual engaged in business in the State of California, within the judicial circuit of this Honorable Court, but denies that any unfair labor practice occurred within that judicial circuit or any other judicial circuit. Respondent further admits that by virtue of Section 10 (e) of the National Labor Relations Act as amended, this Honorable Court has jurisdiction to review purported orders of the National Labor Relations Board.

II.

Respondent admits that pursuant to proceedings before the Board in this matter, the Board, on April 1, 1952, stated its findings of fact and conclusions of law and issued an order directed to the Respondent, his agents, successors and assigns. Respondent further admits that on the same date, April 1, 1952, the Board's decision and order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

III.

The Respondent cannot answer the third paragraph of the Petition since he has no knowledge thereof.

IV.

Further answering, Respondent admits that the purported findings of the National Labor Relations Board to the effect that the Respondent is engaged in a business affecting commerce within the mean-

ing of the National Labor Relations Act as amended is not supported by substantial evidence, and is therefore void and of no effect.

V.

-Further answering, Respondent alleges that the said purported order of the National Labor Relations Board is unconstitutional and void in that it deprives Respondent of rights guaranteed him by the Fifth Amendment of the United States Constitution.

VI.

Further answering, Respondent alleges that the record does not contain substantial evidence sufficient in law to support the said purported order of the National Labor Relations Board.

Wherefore, Respondent having fully answered, prays that the Petition for the enforcement of the order of the National Labor Relations Board be dismissed.

CARTER & POTRUCH,

By /s/ FREDERICK A. POTRUCH.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 5, 1952.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH RESPONDENT, RAY BROOKS, INTENDS TO RELY.

To the Honorable Judges of the United States Court of Appeals for the Ninth Circuit:

Respondent Ray Brooks, in conformity with the laws of this Court, hereby states that the following points are those on which he intends to rely herein:

(1) The National Labor Relations Board did not have jurisdiction over respondent, Ray Brooks, or his business.

(2) The proceedings before the National Labor Relations Board are unconstitutional and void in that they have deprived respondent of rights guaranteed to him by the Fifth Amendment to the United States Constitution.

(3) The Board's Findings of Fact and Conclusions of Law that respondent refused to bargain with the Union, in violation of Section 8 (a) (5) (1) of the National Labor Relations Act as amended were not supported by substantial evidence on the record considered as a whole and therefore are void and of no effect.

Dated at Los Angeles, California, this 2nd day of September, 1952.

CARTER & POTRUCH,

By /s/ FREDERICK A. POTRUCH.

[Endorsed]: Filed September 5, 1952.

No. 13502

**United States
Court of Appeals**
For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Appellant,
vs.
RAY BROOKS,
Appellee.

**Petition for Enforcement of an Order of the
National Labor Relations Board**

**Proceedings Had in the United States Court of Appeals
for the Ninth Circuit**

United States Court of Appeals
for the Ninth Circuit

[Title of Cause.]

Excerpt from Proceedings of Tuesday, February
24, 1953.

Before: Mathews, Stephens and Bone,
Circuit Judges.

ORDER OF SUBMISSION

Ordered petition for enforcement herein argued
by Mr. Wm. J. Arvutis, Attorney, National Labor
Relations Board, counsel for the petitioner, and by
Mr. Erwin Lerten, counsel for respondent, and sub-
mitted to the Court for consideration and decision.

United States Court of Appeals
for the Ninth Circuit

[Title of Cause.]

Excerpt from Proceedings of Thursday, May 14,
1953.

Before: Mathews, Stephens and Bone,
Circuit Judges.

ORDER DIRECTING FILING OF OPINION
AND FILING AND RECORDING OF DECREE

Ordered that the typewritten opinion this day
rendered by this Court in above cause be forthwith
filed by the clerk, and that a decree be filed and re-
corded in the minutes of this Court in accordance
with the opinion rendered.

United States Court of Appeals
for the Ninth Circuit

No. 13,502

May 14, 1953

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

RAY BROOKS,

Respondent.

On Petition for Enforcement of an Order of the
National Labor Relations Board

Before: Mathews, Stephens and Bone,
Circuit Judges.

Bone, Circuit Judge:

OPINION

This is a petition by the National Labor Relations Board for enforcement of the Board's order directing, among other things, that respondent bargain collectively with International Association of Machinists, District No. 27 (hereinafter called "Union"). The order was issued after the usual proceedings under § 10 of the National Labor Relations Act, as amended, in which the Board found that respondent had refused to bargain collectively with

the Union, in violation of §§ 8(a) (1) and 8(a) (5) of the Act.¹

Respondent resists enforcement upon three grounds: (1) that the Board does not have jurisdiction over the unfair labor practices charged; (2) that the Board's finding that respondent refused to bargain is not supported by substantial evidence on the record considered as a whole; and (3) that the Board's finding that at the time of the alleged refusal to bargain the Union represented a majority of the employees in the appropriate bargaining unit is not supported by substantial evidence on the record considered as a whole.

Respondent, an individual, sells Chrysler and Plymouth automobiles at Van Nuys, California, as a dealer under franchise from the Chrysler Corporation, which operates in California and other states. During the calendar year 1950 respondent

¹Section 8(a) (1) of the Act provides that it is an unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of their rights under § 7 of the Act.

Under § 8(a) (5) of the Act it is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a)."

Section 9(a) of the Act reads as follows:

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:

* * *

purchased automobiles of a value in excess of \$400,000 from the Chrysler Corporation. All of these automobiles were purchased, assembled and sold within the State of California. Approximately 50 per cent of the parts going into the automobiles were shipped into California from outside the state.

On the question whether respondent is engaged in commerce within the meaning of the National Labor Relations Act, our very recent case of *National Labor Relations Board v. Howell Chevrolet Company*, 9 Cir., . . F.2d . . , decided February 26, 1953, in which on facts almost identical to those involved in the case at bar we upheld the jurisdiction of the Board, is controlling. See also *National Labor Relations Board v. Townsend*, 9 Cir., 185 F. 2d 378, cert. denied 341 U.S. 909; *National Labor Relations Board v. Ken Rose Motors*, 1 Cir., 193 F. 2d 769.

The facts as to the alleged refusal of respondent to bargain with the Union are as follows. On April 12, 1951, the Board conducted a consent election among respondent's employees to determine whether the employees desired the Union to represent them in collective bargaining. Of the 15 employees in the concededly appropriate bargaining unit, eight voted for the Union. No objection to the election was filed and on April 20, 1951, the Regional Director certified the Union as the employees' bargaining representative.

On April 19, 1951, one week after the election and the day before the certification was issued, respond-

ent, the Union and the Board each received by mail a sheet reading:

“April 18, 1951

“We the undersigned majority of the employees of Ray Brooks, Chrysler-Plymouth Dealer, 6530 Van Nuys Blvd., Van Nuys, Calif., are not in favor of being represented by Union Local No. 727 as a bargaining agent. We respectfully submit this petition for your consideration.”

The purported signatures of nine of the 15 employees in the bargaining unit were appended beneath.

On April 27 a Union representative asked respondent for a conference to negotiate a collective bargaining contract. Respondent by his counsel, replied by letter on May 1. In the letter respondent declared that he had been “given to understand” that the majority of the employees had repudiated the Union and no longer wished to be represented by it. Respondent then called attention to a recent decision of the Court of Appeals for the Sixth Circuit (apparently *N.L.R.B. v. Vulcan Forging Co.*, 6 Cir., 188 F.2d 927) holding that an employer could not be compelled to bargain with a union under such circumstances. Respondent concluded his letter:

“Under the circumstances wouldn’t it be wiser to defer consideration of the proposed negotiations until such time as it might appear that the employees desire to have your union represent them?”

There is no evidence of any further communication between respondent and the Union.

Respondent contends that its letter of May 1 did not constitute a refusal to bargain, but only a request for the "Union's opinion as to the advisability of a meeting in view of the repudiation of the Union by the employees." The letter, written by respondent's counsel, refers to a favorable court decision, indicates its effect, and suggests, albeit in question form, that it would be "wiser" to put off any negotiation until it appeared that the Union had secured a majority of the employees in the bargaining unit. While clothed in polite and conciliatory language, the purport of the letter was that, unless and until the Union could prove its majority, the employer was under no legal obligation to bargain and was not inclined to do so. We cannot say that the Board was unjustified in construing this letter as a refusal to bargain.²

We think we must regard the purported communication of the employees repudiating the Union as authentic. At the same time that the employees'

²The conclusion of the letter, quoted above in the text of the opinion, is an almost verbatim copy of a letter written under similar circumstances and quoted by the court in the case referred to in respondent's letter. See *N.L.R.B. v. Vulcan Forging Co.*, 6 Cir., 188 F.2d 927, at 929. In that case the court took the position that the letter constituted a refusal to bargain, but held that since the employees had repudiated the bargaining agent the employer was not required to bargain. The case is discussed, *infra*.

communication was sent to respondent, copies were also sent to the Union and to the Board. There is no evidence that the Union ever challenged its genuineness, although it would have been a simple task to check whether the nine purported signatories had in fact signed the document and it was clearly to the interest of the Union to make the fact known if they had not. It was proved that the names signed were names of employees in the bargaining unit. While respondent did not call the purported signers to verify their signatures, counsel supporting the complaint neither moved to strike the document for such failure nor made any attempt to impeach it. Under these circumstances we think it would be unreasonable to stamp the communication a possible forgery, and accordingly we take it as a fact that a majority of respondent's employees repudiated the Union on April 18, 1951.

The final question presented is whether respondent was obliged to bargain with the Union in light of the repudiation of the Union by a majority of respondent's employees within a week after the Union had been designated as bargaining representative in a Board-conducted election. This problem has given the courts some difficulty and the decisions are not harmonious. This court has not previously had occasion to pass upon the question.³

³This court has decided related questions. In *N.L.R.B. v. Hollywood-Maxwell Co.*, 9 Cir., 126 F.2d 815, we held that where nearly two years elapsed after the choice of a bargaining representative and the employees repudiated the union upon discover-

The Wagner Act, as the National Labor Relations Act was known prior to its amendment in 1947, contained provisions for Board-conducted elections but did not specify the intervals at which such elections should be held or the effect of a certification once issued.

The Board saw fit to adopt a rule that when a bargaining representative had been elected by a majority of the employees in an appropriate unit and certified by the Board, its representative status could not be disturbed for a reasonable period, normally about a year. *Whittier Mills Company*, 15 NLRB 457, enforced 5 Cir., 111 F.2d 474; *Century Oxford Mfg. Corp.*, 47 NLRB 835, enforced 2 Cir.,

ing that the union's organizer had been bribed by the employer, the employer could not be ordered to bargain with the union. In *N.L.R.B. v. Biles Coleman L. Co.*, 9 Cir., 96 F.2d 197, we held that where the employees repudiated their bargaining representative after the Board had issued its order and prior to its enforcement by this court, the employer could nonetheless be compelled to bargain with the union. The latter holding is in accord with the unanimous view. See, e.g., *N.L.R.B. v. Swift & Co.*, 3 Cir., 162 F.2d 575, cert. denied 332 U.S. 791; *N.L.R.B. v. S. H. Kress & Co.*, 6 Cir., 194 F.2d 444. It is also settled that where the representative's loss of majority is attributable to unfair labor practices on the part of the employer, the employer may still be compelled to bargain with the union. *Franks Bros. Co. v. N.L.R.B.*, 321 U.S. 702; *N.L.R.B. v. Andrew Jergens Co.*, 9 Cir., 175 F.2d 130, cert. denied 338 U.S. 827; *N.L.R.B. v. Swift & Co.*, supra; *Superior Engraving Co. v. N.L.R.B.*, 7 Cir., 183 F.2d 783, cert. denied 340 U.S. 930.

140 F.2d 541; Lift Trucks, Inc., 75 NLRB 998; Majure Transport Company, 95 NLRB 311, enforced 5 Cir., 198 F.2d 735; see Celanese Corp. of America, 95 NLRB 664, 672, and the extended discussions of the Board's rule in National Labor Relations Board v. Globe Automatic Sprinkler Co., 3 Cir., 199 F.2d 64, 68, 69, and General Box Company, 82 NLRB 678. However, the rule was qualified by the proviso that the union's majority could be challenged within the certification year where "unusual circumstances" were present.⁴

While the Board's rule did violence to orthodox principles of agency and on first impression appeared inconsistent with the Wagner Act's guarantee of the right of employees to bargain through representatives of their own choosing, the rule was approved by most of the courts which passed upon it prior to the amendment of the Act in 1947. NLRB v. Century Oxford Mfg. Co., 2 Cir., 140 F.2d 541, cert. denied 323 U.S. 714; NLRB v. Botany Worsted Mills, 3 Cir., 133 F.2d 876, cert. denied 319 U.S. 751;

⁴The Board found "unusual circumstances" where the union representing the employees was dissolved, Public Service Electric & Gas Co., 59 NLRB 325; where the bargaining representative switched its affiliation from one international union to another, so that the identity of the bargaining agent was doubtful, Carson Pirie Scott & Co., 69 NLRB 935; Jasper Wood Products Co., Inc., 72 NLRB 1306; where the number of employees in the bargaining unit doubled or quadrupled in the space of a year, Westinghouse Electric & Manufacturing Co., 38 NLRB 404; Celanese Corporation of America, 73 NLRB 864.

NLRB v. Appalachian E. Power Co., 4 Cir., 140 F.2d 217; see NLRB v. Prudential Life Insurance Co., 6 Cir., 154 F. 2d 385, 389; Wilson & Co., Inc., v. NLRB, 8 Cir., 162 F.2d 310; but cf. NLRB v. Inter-City Advertising Co., 4 Cir., 154 F.2d 244.

The Courts found ample justification for the rule. The Board's election procedure, with its advantage of impartial supervision and its guarantee of anonymity to employees in expressing their choice by secret ballot, had been designed by Congress as the most effective and reliable means of ascertaining the employees' deliberate will. Thus, when the results of such election had been certified by the Board, it was felt that repudiation of the certified representative should be established only by an equally probative technique. NLRB v. Botany Worsted Mills, 3 Cir., 133 F.2d 876, 881, 882, cert. denied 319 U.S. 751; NLRB v. Century Oxford Mfg. Co., 2 Cir., 140 F.2d 541, 542, 543, cert. denied 323 U.S. 714; NLRB v. Appalachian E. Power Co., 4 Cir., 140 F.2d 217, 222; and see the Board's opinion in the Century Oxford Mfg. Corp. case, *supra*, 47 NLRB 835, 845.

It was impracticable, however, for the Board to conduct elections to keep pace with every change in the sentiments of the employees in a bargaining unit. See *National Labor Relations Board v. Century Oxford Mfg. Co.*, *supra*, at page 542; NLRB v. Inter-City Advertising Co., 4 Cir., 154 F.2d 244, 247. The processing of an election, if it were contested, consumed several months. The Board, therefore, adopted the practice of entertaining petitions

for an election in a bargaining unit only after a year had elapsed since the Board's last previous certification of a representative for that unit. The interval between elections coincided with the period which the Board usually held to be a "reasonable time" for suspension of the power of employees to oust their certified representative. This did not mean, however, that a representative's authority could be revoked only in a Board-conducted election. When a reasonable time had elapsed after certification, usually a year, the presumption of the certified union's authority could be rebutted by a showing that the majority of the employees had repudiated the union, whether this choice was made manifest in an election or otherwise.

The Board's rule above referred to was also justified upon the ground that it was necessary to secure stability in bargaining relationships. As the court said in *NLRB v. Century Oxford Company*, *supra*, at p. 541:

"Inherent in any successful administration of such a system is some measure of permanence in the results: freedom to choose a representative does not imply freedom to turn him out of office with the next breath. As in the case of choosing a political representative, the justification for the franchise is some degree of sobriety and responsibility in its exercise."

And in *NLRB v. Botany Worsted Mills*, *supra*, at p. 881, it was said, in answer to the argument that

employees were free to oust their certified bargaining representative at any time:

“The argument, while containing some elements of plausibility, would, if accepted, make chaos out of the administration of the statute and prevent the protection of the very rights which it aimed to secure. Litigants in all law suits are entitled to their rights under the law, but they must work them out in orderly fashion according to rule.”

In *NLRB v. Appalachian E. Power Co.*, *supra*, the court said, at p. 221:

“To assume that the Board’s certification speaks with certainty only for the day of its issuance and that a company may, with impunity, at any time thereafter refuse to bargain collectively on the ground that a change of sentiment has divested the duly certified representative of its majority status would lead to litigious bedlam and judicial chaos.”⁵

The Labor Management Relations Act of 1947 (commonly known as the Taft-Hartley Act), like the Wagner Act, is silent as to the effect of a Board certification of a bargaining agent. However, in

⁵Cf. the Board’s rule that where there is a bargaining contract between a bargaining agent and the employer, the agent’s representative status cannot be challenged until near the end of the contract term, approved in *NLRB v. Geraldine Novelty Co., Inc.*, 2 Cir., 173 F.2d 14, 16, 17.

passing the Taft-Hartley Act, Congress was fully advised of the binding effect given by the Board and the courts to a Board certification of a representative under the Wagner Act. With reference to § 9(c) (3) of the Senate Bill, now § 9(c) (3) of the Act, which provides, *inter alia*, that elections in any given bargaining unit may be held only once a year,⁶ the Senate Report (submitted by Senator Taft) stated:

“This amendment prevents the Board from holding elections more often than once a year in any given bargaining unit unless the results of the first election are inconclusive by reason of none of the competing unions having received a majority. At present, if the union loses, it may on presentation of additional membership cards secure another election within a short time, but if it wins its majority cannot be challenged for a year.” (Emphasis ours.) S. Rep. No. 105, 80th Cong., 1st Sess., p. 25.

Senator Taft, in explaining § 9(c) (3) on the Senate floor, said:

“The bill also provides that elections shall be held only once a year, so that there shall not be a constant stirring up of excitement by continual elections. The men choose a bargaining agent for

⁶§ 9(c) (3) of the Act provides in part as follows:

“(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. * * *”

one year. He remains the bargaining agent until the end of that year." (Emphasis ours.) 93 Cong. Rec. 3954. [Legislative History of the Labor Management Relations Act, 1947, Vol. 2, p. 1013.]

And in the Senate Report (S. Rep. No. 105, 80th Cong., 1st Sess., p. 12) it was stated:

"In order to impress upon employees the solemnity of their choice, when the Government goes to the expense of conducting a secret ballot, the bill also provides that elections in any given unit may not be held more frequently than once a year." (Emphasis ours.)

If a certification was thought to be as meaningless and ephemeral as respondent would have us believe, it is hard to see how employees would approach a Board election with any solemnity, whether the interval between elections be one year or ten.⁷

⁷Giving further indication that in 1947 Congress was aware of the effect given a Board certification is the history of § 9(f) (7) of the House Bill, H. R. 3020. This provision would have limited certification elections to one a year, but would have permitted decertification elections at any time. Congressman Klein, in opposing the provision, said: "Section 9(f) (7) * * * throws sharply into focus the remarkable bias of this bill against collective bargaining. That section prohibits an election in any unit or subdivision thereof in which a valid election has been held within the preceding 12 months. A sole exception is made in the case of an application to decertify a union, which I have just discussed. Consider the result—the greatest con-

It is plain that Congress, in the course of adopting the 1947 amendments to the Act, was well aware of the rule, adopted and regularly applied by the Board and approved by the courts, making the certification of a bargaining agent binding on the employees represented for a reasonable time. Under these circumstances it is a fair assumption that by its silence on the question Congress accepted this administrative and judicial construction of the Act. *NLRB v. Gullett Gin Co.*, 340 U.S. 361, 365, 366.⁸

fusion and uncertainty if the employees have selected a bargaining representative, but absolute finality for 12 months if they have not.” (Emphasis ours.) 93 Cong. Rec. 3557.

It is significant that the provision allowing a decertification election at any time was deleted from the House bill in conference. H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 49.

⁸While it is quite clear that Congress by its silence adopted the rule that a certification of a bargaining agent is binding on the employees for a reasonable time, we need not, for the purposes of this case, and we do not go so far as to say that Congress adopted a rigid rule fixing one year as the term of the certified bargaining agent's representative status. While this was the period often prescribed by the Board prior to the Taft-Hartley Act, and it appears that Congress was aware that this was the period so prescribed, the Board, prior to 1947, was by no means consistent or unqualified in stating that a certified union's representative status continued for the period of one year. See *NLRB v. Globe Automatic Sprinkler Co.*, 3 Cir., 199 F.2d 64, where the court pointed out that the Board generally defined the certification period as a “reasonable time,” “cus-

Of the cases arising since the passage of the Taft-Hartley Act, all but one appear to approve the rule that the representative status of a certified bargaining agent is beyond challenge for at least a "reasonable time." See *NLRB v. Worcester Woolen Mills Corp.*, 1 Cir., 170 F.2d 13, 17, cert. denied 336 U.S. 903; *NLRB v. Globe Automatic Sprinkler Co.*, 3 Cir., 199 F.2d 64, 69; *NLRB v. Sanson Hosiery Mills*, 5 Cir., 195 F.2d 350, 352, 353, cert. denied 344 U.S. 863; *Superior Engraving Co. v. NLRB*, 7 Cir., 183 F.2d 783, 792, cert. denied 340 U.S. 930; contra: *NLRB v. Vulean Forging Co.*, 6 Cir., 188 F.2d 927.

tomarily" or "usually about one year." In the *Globe Automatic Sprinkler* case the court refused to enforce an order requiring an employer to bargain with a union which had been repudiated by a majority of the employees in the bargaining unit eleven months and one week after certification of the union, on the ground that a "reasonable time" had elapsed after certification.

Cf. *National Labor Relations Board v. Sanson Hosiery Mills, Inc.*, 5 Cir., 195 F.2d 350, cert. denied 344 U.S. 863, where the court apparently took the position that the only means of recalling a certified bargaining representative was by another Board-conducted election, regardless of the length of time which had elapsed since certification. The Board itself has not gone so far. The Board now follows the rule that the fact of the union's majority during the certification year can be rebutted only by a showing of unusual circumstances. However, after the first year of the certificate has elapsed, though the certificate still creates a presumption of the certified union's majority, the presumption is rebuttable in the absence of unusual circumstances. *Celanese Corporation of America*, 95 NLRB 664.

In the *Vulcan Forging* case, *supra*, which appears to stand alone the court set aside an order of the Board directing an employer to bargain with the certified bargaining representative where the employees had repudiated the representative just eight days after a Board-conducted election. The court said, at p. 931:

“They [the employees] are entitled by law to bargain collectively through a representative of their own choosing. To force them to bargain through a representative which they had repudiated would be depriving them of their right to bargain through the representative of their choice.”⁹

⁹Aside from the *Vulcan* case, the only case which could be of comfort to respondent is *NLRB v. Inter-City Advertising Co.*, 4 Cir., 154 F.2d 244. The bargaining unit in that case consisted of only four employees when a Board-conducted election resulted in a union's being certified as bargaining representative for the unit. Thereafter the employer, without being actuated by hostility toward the union, and in due course of business, made changes in working hours in the plant. As a consequence, one of the employees in the bargaining unit was discharged. Another was replaced and transferred to another department. At the time of the refusal of the employer to bargain only one of the three employees in the bargaining unit was a union member. The court, one member dissenting, set aside an order of the Board directing the employer to bargain with the union. The court distinguished its earlier case of *NLRB v. Appalachian E. Power Co.*, 4 Cir., 140 F.2d 217, on the ground that it would have been a

The language quoted overstates the effect of the rule that the authority of a certified bargaining agent is irrevocable for a "reasonable time." While under that rule the exercise of the right of employees to oust their representative is suspended for a time, employees are certainly not "deprived" of that right. And even this temporary suspension of the right is not recognized where unusual circumstances would render it plainly unreasonable or unjust. The question is whether this limited restriction on the rights of employees is consistent with the policies and provisions of the National Labor Relations Act considered as a whole. In light of what we consider the manifest intent of Congress, and in accordance with the great weight of judicial authority, we think that it is.

We are of the opinion that the right of employees to bargain through representatives of their own choosing must be, and was intended to be, restricted to the extent necessary to make workable and effective the administrative scheme devised for the protection of that right and for the promotion of the other objectives of the Act. A primary objective of the Wagner Act, and to an even greater extent the Taft-Hartley Act, was stability in industrial relationships. To achieve the desired industrial repose

simple task for the Board to conduct another election because of the small size of the bargaining unit. The Inter-City case could well be said to have involved "unusual circumstances." It is of dubious precedent value in light of the dictum in the recent case of *NLRB v. Borchert*, 4 Cir., 188 F.2d 474.

“a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed.” *Franks Bros. Co. v. NLRB*, 321 U.S. 702, 705; see *NLRB v. Prudential Insurance Co.*, 6 Cir., 154 F.2d 385, 389.

If the argument of respondent is accepted, a Board-conducted election and certification, instead of inaugurating a period of industrial repose, would lead only to continued raiding of the bargaining agent's membership and the disrupting influence of rival union activities within the bargaining unit itself. Employers would be beset by conflicting demands and claims for recognition without a means of determining with certainty whether, or with whom, they should bargain. Bargaining relationships once established would be subject to destruction upon every volatile whim or caprice and before results could be achieved and judged by the intended beneficiaries. It was this situation which the provisions for Board-conducted elections were designed to obviate. We see no reason why this purpose should be frustrated by treating the right of employees to choose their representatives as an absolute, above reasonable restrictions designed to promote “some degree of sobriety and responsibility” in the exercise of that right.

Returning to the facts of the case at bar, it is plain that when the employees repudiated the Union one week after the election a “reasonable time” had not passed to give the bargaining relationship a fair

chance to succeed. No unusual circumstances appear. Accordingly, the Board was justified in concluding that the Union continued to be the bargaining representative for the employees and that respondent's refusal to bargain constituted an unfair-labor practice.

The order of the Board is affirmed and will be enforced.

(Endorsed): Opinion. Filed May 14, 1953. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

No. 13,502

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

RAY BROOKS,

Respondent.

DECREE

On petition for enforcement of an order of the National Labor Relations Board.

This cause came on to be heard on the petition of the National Labor Relations Board, filed herein on August 21, 1952, for enforcement of its order herein of April 1, 1952, and on the answer of respondent Ray Brooks, filed September 5, 1952, to said petition, and on the transcript of record herein, briefs filed by respective parties, and oral arguments had thereon, and was duly submitted:

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court, that the said petition to enforce be, and hereby is granted, and that the respondent, Ray Brooks, Van Nuys, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Association of Machinists, District Lodge

No. 727, as the exclusive representative of all his employees, excluding salesmen, guards, professionals, and supervisors;

(b) In any manner interfering with the efforts of International Association of Machinists, District Lodge No. 727, to bargain collectively with him in behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Association of Machinists, District No. 727, as the exclusive representative of all employees in the aforesaid appropriate unit with respect to wages, rates of pay, hours of employment or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at his place of business at Van Nuys, California, copies of the notice attached to the Intermediate Report and marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by him for a period of sixty (60) consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken

by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Decree what steps Respondent has taken to comply herewith.

Appendix A

Notice to All Employees

Pursuant to a Decree of the United States Court of Appeals Enforcing a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Bargain collectively upon request with International Association of Machinists, District Lodge No. 727, as the exclusive representative of all employees in the bargaining unit described herein with respect to rate of pay, wages, hours, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees of Ray Brooks, Van Nuys, California, but excluding salesmen, guards, professionals, and supervisors.

We Will Not in any manner interfere with the efforts of the above-named union to bargain collectively with us, or refuse to bargain with said union

as the exclusive representative of the employees in the bargaining unit set forth above.

Dated.....

RAY BROOKS,

(Employer.)

By.....

(Representative.) (Title.)

This notice must remain posted for 60 consecutive days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Endorsed]: Filed May 14, 1953.

PAUL P. O'BRIEN,

Clerk.

United States Court of Appeals
for the Ninth Circuit

[Title of Cause.]

Excerpt from Proceedings of Wednesday, December 16, 1953.

Before: Mathews, Stephens and Bone,
Circuit Judges.

ORDER DENYING PETITION FOR
REHEARING

On consideration thereof, and by direction of the Court, It Is Ordered that the petition of respondent, filed June 2, 1953, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is, denied.

United States Court of Appeals
for the Ninth Circuit

CERTIFICATE OF CLERK, U. S. COURT OF
APPEALS FOR THE NINTH CIRCUIT,
TO RECORD CERTIFIED UNDER RULE
38 OF THE REVISED RULES OF THE
SUPREME COURT OF THE UNITED
STATES

I, Paul P. O'Brien, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing 89 pages, numbered from and including 1 to and including 89, to be a full, true and correct copy of the entire record of the above-entitled case in the said Court of Appeals, made pursuant to request of counsel for the respondent, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 4th day of January, 1954.

[Seal]

PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 536

RAY BROOKS, Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD

ORDER ALLOWING CERTIORARI—Filed March 8, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(5593)